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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,848	01/25/2006	Helene Bouilloux-Lafont	11345/063001	7896

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EXAMINER
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ANDRAMUNO, FRANKLIN S

ART UNIT	PAPER NUMBER
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2424

NOTIFICATION DATE	DELIVERY MODE
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02/04/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@oshaliang.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/533,848	<b>Applicant(s)</b> BOUILLLOUX-LAFONT ET AL.	
	<b>Examiner</b> FRANKLIN S. ANDRAMUNO	<b>Art Unit</b> 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01/13/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/13/09 has been entered.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-20 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory

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category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 19 is rejected under 35 U.S.C. 102(e) as being unpatentable by Heckerman et al (US 2003/0229531 A1). Hereinafter referred as Heckerman.

Regarding claim 19, Heckerman discloses the method for obtaining advertisement selection information on a broadcast side in a television network **(Possible Advertisement (210) in figure 2)**, the advertisement selection information comprising values of probabilities, the method comprising: determining for a determined advertisement a final number of selections respectively for each one of one or a plurality of advertisement spaces **(Determining a response probability (302) in figure 3)**, converting the obtained one or plurality of final numbers of selections into values of probabilities for selecting the determined advertisement in the respective one or plurality of advertisement spaces **(possible advertisements (210) in figure 2)**, broadcasting the one or plurality of values of probabilities for selecting the determined advertisement

**(Altering a score associated with each of the possible advertisements (303) in figure 3).**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heckerman et al (US 2003/0229531 A1) in view of Harville (2006/0029368 A1). Hereinafter referred as Heckerman and Harville.

Regarding claim 20, Heckerman discloses the method for obtaining an advertisement selection probability according to claim 19, further comprising: computing for the determined advertisement the final number of selections respectively for each one of the one or the plurality of advertisement spaces **(determining a response probability (320) in figure 3).**

**However Heckerman fails to** depend on a predetermined number of times for displaying the determined advertisement. Harville teaches on **(figure 1)** Construct commercial breaks based on the adjusted scores and relationships among candidate times (104).

Therefore, it would have been obvious at the time of the invention to modify Heckerman's reference to include a probability to select an advertisement based on the number of times the advertisement will be displayed. This is a useful combination because it provides advertisement companies a more accurate target of viewers.

2. Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heckerman et al (US 2003/0229531 A1) in view of Harville (2006/0029368 A1). Hereinafter referred to as Heckerman and Harville.

Regarding claim 12, Heckerman discloses a method for using an advertisement in a STB of a television network (**Advertisement (210) in figure 2**), the method comprising: receiving advertisement selection information (**Advertising computer system (260) in figure 2**) for a plurality of associations of a determined advertisement space with a determined advertisement (**Decision Tree (222) in figure 2**), wherein the advertisement selection information comprises a probability value corresponding to each of the plurality of associations (**page 2 paragraph (0014)**), triggering a selection of an advertisement for the determined advertisement space, generating a random value or a pseudo-random value (**Probability Determination Module (261) in figure 2**), selecting the determined advertisement if the random value or the pseudo-random value falls into the range of values corresponding to the association containing the determined advertisement and the determined advertisement space (**Score Alteration Module (262) in figure 2**), and upon selection of the determined advertisement, using the selected advertisement (**Altering a score (303) in figure 3**). Heckerman further

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attributes a range of values to each probability value (**page 2 paragraph (0016)**) received in the STB (**computer system (120) on (page 3 paragraph (0033) lines 1-3)**)).

**However, Heckerman fails to teach** the range of values corresponding to each value is attributed so as to avoid overlap with distinct associations comprising the determined advertisement space. Harville teaches on (**page 3 paragraph (0027) lines 1-10**) the scores associated with each candidate time are adjusted. The score for a candidate time can be adjusted based on an analysis of one or more cues proximate to the candidate time that are different than the one or more cues used to identify the candidate time. Therefore, Harville teaches a system with a range of values associated with each candidate time. Moreover, each value is attributed so that the candidate time is different for identifying the candidate time. In addition, Furthermore, Harville teaches on (step (209) in figure 2) Iterative refinement and optimization of commercial.

Therefore, it would have been obvious at the time of the invention to include the use of a range of values corresponding to each value is attributed so as to avoid overlap with distinct associations. This is a useful combination because a system is capable of identifying each client and to form a probability based on each user's profile.

Regarding claims 13, Heckerman discloses the method for using an advertisement according to claim 12, further comprising: computing the value of probability for selecting the determined advertisement for the determined advertisement space (**Mean Response Probability Value in figure 5**) depending on at least a desired

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number of times that the determined advertisement is to be displayed, broadcasting the value of probability through the television network. The advertisement depends on the number of times the advertisement is to be displayed **(page 1 paragraph (0008 lines 18-28) Harvilles [the probability models are based on statistics regarding the presence of a commercial at any given time in a set of audiovisual content])**.

Regarding claims 14, Heckerman discloses the method for using an advertisement according to claim 13, further comprising: computing the value of probability depending on the desired number of times that the determined advertisement is to be displayed within a determined period of time **(page 2 paragraph (0010) lines 1-7)**.

Regarding claims 15-17, Heckerman discloses the method for using an advertisement according to claims 12-14, further comprising: broadcasting the determined advertisement through the television network, retrieving in the STB the determined advertisement on selecting the determined advertisement, displaying the determined advertisement in the determined advertisement space **(Video Adapter (148) in figure 1)**.

Regarding claim 18, Heckerman discloses the method for using an advertisement in a STB according to claim 12, further comprising: storing the determined advertisement in the STB **(Hard Disk Drive Interface (132) in figure 1)**.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKLIN S. ANDRAMUNO whose telephone number is (571)270-3004. The examiner can normally be reached on Mon-Thurs (7:30am - 5:00pm) alternate Fri off (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571)272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/  
Supervisory Patent Examiner, Art  
Unit 2424